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DSK Legal Knowledge Center

Updates on
• Tax

TAX

A. Service tax on commission paid to Managing Director / Directors by the company - reg

The Central Board of Excise and Customs, Ministry of Finance has, vide circular dated July 31, 2009¹, clarified that remunerations paid to Managing Director / Directors of a company, whether whole-time or independent, when being compensated for their performance as Managing Director/ Directors would not be liable to service tax.

For more information please refer to

<http://www.servicetax.gov.in/circular/st-circular09/st-circ-115-2k9.htm>

¹ Circular No. 115/09/2009 – ST

B. Unitech Ltd. Vs Commissioner of Service Tax²

In a recent judgment, Delhi High Court has accepted the view taken by the Bombay High Court in the Indian National Ship Owners Association³ case. It is now a well settled proposition of law that service recipient in India cannot be made liable to pay service tax on services rendered outside India by the service provider prior to April 18, 2006.

Facts-

Unitech Ltd. (“Assessee”) is a recipient of taxable services i.e. architectural services from a non-resident, viz. Callison

² 2009 (15) STR 385 (Del.)

³ 2009 (13) STR 235 (Bom.)

Architecture Inc., USA. Such services were rendered from USA and were received and used by the Assessee in its business and commerce in India. The Revenue Authorities called upon the Assessee to pay service tax in terms of Rule 2(1)(d)(iv) of the Service Tax Rules, 1994, being recipient of services.

Tribunal relying on its own judgment passed by a three member Bench in the case of Hindustan Zinc Ltd vs Commissioner of Central Excise, Jaipur⁴, held that the Assessee is liable to pay service tax as recipient w.e.f. January 1, 2005 in terms of notification dated December 31, 2004⁵ issued under the provisions of Section 68(2) of the Finance Act, 1994. This matter was taken up in appeal before Delhi High Court.

Observation of High Court of Delhi-

The High Court followed the judgment of the Division Bench of Bombay High Court in Writ Petition dated December 11, 2008⁶ titled Indian National Ship Owners Association vs Union of India, wherein it was held that the Revenue can collect tax only upon being invested with due legal authority; an event which occurred

on the insertion of Section 66A in the Finance Act, 1994 w.e.f. April 18, 2006 by virtue of the Finance Act, 2006. Delhi High Court took the view that the Assessee is not liable to pay any service tax on services rendered from outside India prior to incorporation of Section 66A of the Finance Act, 1994. The Court observed that that Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 cannot substitute or prevail over the substantive provisions of law and impose levy which has no supporting provision.

Comment-

Judgments in the case of Indian National Shipowners Association⁷ and in the case of Unitech Ltd. have finally settled the dispute between service recipients and service tax authorities, as now for the period prior to April 18, 2006, the recipient of the services rendered from outside India cannot be made liable to pay service tax. It is worth mentioning here that prior to the judgments in these two cases, DSK Legal had procured favorable order on the identical lines and arguments from CESTAT, New Delhi in the case of Anant Spinning Mills⁸.

⁴ 2008 (11) STR 338 (Tri. LB)

⁵ 2009 (13) STR 235 (Bom.)

⁷ supra.

⁸ 2009 (14) STR 184 (Del.)

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